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December 15, 2016

VIA ECF

The Hon. Eric N. Vitaliano
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Castro v. Cusack, et al.*, 15 Civ. 06714-ENV-LB: Request for Approval to Manually File Exhibits in Support of Motions to Dismiss

Dear Judge Vitaliano:

The undersigned represent Defendants Showtime Networks Inc. (“Showtime”), Sony Pictures Television Inc. (“SPT”), Touchstone Television Productions, LLC d/b/a ABC Studios (“ABC”) and Television Twentieth Century Fox Film Corporation (“TCFFC”), erroneously sued as “20th Century Fox Television Entertainment Group and Subsidiaries” (together, “Defendants”) in the above-referenced action.

Defendants write pursuant to Your Honor’s Individual Practices to respectfully request permission to manually file certain exhibits to Defendants’ respective Motions to Dismiss Plaintiff’s Amended Complaint. Specifically, these exhibits consist of DVD copies of the works at issue in Plaintiff’s copyright infringement claims (*Huff*, *Dirt!*, and *Empire*).¹ Defendants have already served these DVD copies on Plaintiff in support of their respective Motions to Dismiss as follows: Exhibits 7 and 8 to the Declaration of Elaine K. Kim in Support of Showtime and SPT’s Motion to Dismiss, Exhibits B and C to the Declaration of Rachel Schwartz in Support of ABC’s Motion to Dismiss, and Exhibit A to the Declaration of Linda M. Burrow in Support of TCFFC’s Motion to Dismiss.

As the DVDs cannot be filed electronically, Defendants respectfully request permission to file them manually in the manner provided by the Court’s Local Rules and Your Honor’s Individual Practices. Pursuant to this Court’s prior orders, Showtime/SPT and ABC are to file their fully briefed Motions to Dismiss by December 21, 2016, although ABC has sought a brief extension

¹ Plaintiff’s Amended Complaint substantially references and relies on, and thus incorporates, these works. Courts properly consider the parties’ respective works in deciding motions to dismiss copyright infringement claims. *See Peter F. Gaito Arch., LLC v. Simone Dev. Corp.*, 602 F.3d 57, 64 (2d Cir. 2010); *Blakeman v. Walt Disney Co.*, 613 F. Supp. 2d 288, 298 (E.D.N.Y. 2009) (“many courts have, after comparing the works at issue, dismissed infringement claims for failure to state a claim where substantial similarity between the works cannot be found.” (citing cases)); *Williams v. A&E TV Networks*, 122 F. Supp. 3d 157, 163 (S.D.N.Y. 2015) (dismissing copyright infringement complaint with prejudice after reviewing plaintiff’s treatment and defendant’s 12-episode television series).



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of its time to file the fully briefed motion by separate letter today due to the death of a family member this morning. Pursuant to the Court's December 15, 2016 order, TCFFC is to file its fully-briefed Motion to Dismiss on or before February 10, 2017.

Thank you for your consideration of this matter.

Respectfully submitted,

MITCHELL SILBERBERG & KNUPP LLP

/s/ David B. Gordon

David B. Gordon

Attorneys for Defendants Showtime Networks, Inc.
and Sony Pictures Television Inc.

SCHWARTZ & THOMASHOWER LLP

/s/ Rachel Schwartz

Rachel Schwartz

Attorneys for Defendant Touchstone Television
Productions, LLC d/b/a ABC Studios

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LLP

/s/ Katherine M. Bolger

Katherine M. Bolger

Attorneys for Defendant Twentieth Century Fox Film
Corporation, erroneously sued as "20th Century Fox
Television Entertainment Group and Subsidiaries"

cc: *Pro Se* Plaintiff Romanus Castro (by FedEx overnight delivery and email)
Counsel of Record (via ECF)



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CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2016, I served the foregoing Letter upon all counsel via ECF and have caused a true and correct copy of the foregoing to be served by email and Federal Express overnight delivery upon:

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Plaintiff pro se

A handwritten signature in cursive script that reads 'Mari Tamura'.

Mari Tamura